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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 758

[Docket No. 150220163-5163-01]

RIN 0694-AG51

Additional Improvements and Harmonization of Export Clearance Provisions

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Advanced notice of proposed rulemaking.

SUMMARY: The Bureau of Industry and Security (BIS) in this advanced notice of proposed rulemaking (ANPR) requests comments for how the export clearance requirements under the

Export Administration Regulations (EAR) can be improved, including how the EAR export clearance provisions can be better harmonized with the export clearance requirements under the International Traffic in Arms Regulations (ITAR). This ANPR is part of Commerce's retrospective regulatory review and ongoing harmonization efforts being undertaken by Commerce and State as part of Export Control Reform (ECR) implementation. This ANPR is also part of Commerce's retrospective regulatory review plan under Executive Order (EO) 13563 (see the SUPPLEMENTARY INFORMATION for availability of the plan).

DATES: The Bureau of Industry and Security will accept comments on this advanced notice of proposed rulemaking until [insert date 45 days from date of publication in the *Federal Register*].

ADDRESSES: You may submit comments by any of the following methods:

- By the Federal eRulemaking Portal: <http://www.regulations.gov>. The identification number for this rulemaking is BIS-2015-0012.
- By e-mail directly to publiccomments@bis.doc.gov. Include RIN 0694-AG51 in the subject line.
- By mail or delivery to Regulatory Policy Division, Bureau of Industry and Security, US Department of Commerce, Room 2099B, 14th Street and Pennsylvania Avenue, NW, Washington, DC 20230. Refer to RIN 0694-AG51.

FOR FURTHER INFORMATION CONTACT: For questions about this ANPR, contact Timothy Mooney, Regulatory Policy Division, Office of Exporter Services, Bureau of Industry and Security, at 202-482-2440 or email: timothy.mooney@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

Background

The Bureau of Industry and Security (BIS) in this advanced notice of proposed rulemaking (ANPR) requests comments for how the requirements under part 758 (Export clearance) of the Export Administration Regulations (EAR) (15 CFR parts 730-774) can be improved, including how the EAR export clearance provisions can be better harmonized with the export clearance requirements under the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120-130). This ANPR is part of Commerce's retrospective regulatory review and ongoing harmonization efforts being undertaken by Commerce and State as part of Export Control Reform (ECR) implementation. Commerce's full retrospective regulatory review plan is available at: <http://open.commerce.gov/news/2011/08/23/commerce-plan-retrospective-analysis-existing-rules>.

Harmonization of Export Clearance Provisions

The President's Export Control Reform (ECR) Initiative has transferred thousands of formerly ITAR controlled defense article parts and components, along with other items, to the Commerce Control List in the EAR under the jurisdiction of the Department of Commerce. The EAR includes part 758, which specifies requirements for export clearance under the EAR. As part of

ECR implementation, BIS has made certain changes to part 758 to address the addition of the 9x515 and “600 series” ECCNs to the CCL (see the EAR final rules published on April 16, 2013 (78 FR 22660), May 13, 2014 (79 FR 27418) and November 12, 2014 (79 FR 67055)), along with other changes to the EAR to account for the 9x515 and “600 series” ECCNs being added to the EAR.

As a general principle, under the ECR implementation that is currently underway, wherever the ITAR and EAR have provisions that are intended to achieve the same purpose the U.S.

Government is making an effort to harmonize those provisions, except when there is a reason why those provisions should remain different. The export clearance requirements under the ITAR and the EAR are an example of requirements that may for certain provisions be harmonized to reduce the burden on exporters, improve compliance with the export clearance requirements, and ensure the export clearance requirements are achieving their intended purpose for use under the U.S. export control system, specifically under the transactions “subject to the ITAR” and “subject to the EAR.”

Request for Comments on Additional Improvement and Harmonization of Export Clearance

Provisions

BIS is considering further revisions to part 758 of the EAR as part of Commerce’s retrospective regulatory review and ongoing harmonization efforts being undertaken by Commerce and State as part of ECR implementation. As part of this review effort for how part 758 can be improved to make these provisions more effective and to assist BIS in developing regulatory changes to improve these provisions of the EAR, BIS requests comments on these potential future changes

described under paragraphs (A) through (E). Export control documents in paragraphs (A) through (C) include the commercial invoice and contractual documentation.

A. Require ECCNs on export control documents. The ECCN for all 9x515 and “600 series” items is currently required to be identified on the export control documents, along with the destination control statement. BIS is considering requiring that the ECCN be identified for all items on the Commerce Control List. This would not include items that are designated EAR99.

B. Require identification of country of ultimate destination on export control documents. BIS is considering requiring that the country of ultimate destination be identified on the export control documents. This requirement would mirror the requirement in the ITAR and BIS believes that this would only impact a small number of exports where additional actions would be needed by exporters, because in most cases, the export control documents already identify the country of ultimate destination.

C. Require license number or export authorization symbol on export control documents. BIS is also considering requiring that the license number or export authorization symbol be identified on export control documents. This proposed revision would require that the license number, license exception code, or no license required designation be entered on the export control documents. BIS specifically requests comments on the application of this requirement to mixed authorization and mixed jurisdiction shipments.

D. Require AES filing for exports to Canada for items controlled for NS, MT, NP and CB.

BIS seeks comments on the potential impact and feasibility of changing section 758.1 under paragraph (b) to require EEI filing in the AES for all exports to Canada of items controlled for National Security (NS), Missile Technology (MT), Nuclear Nonproliferation (NP), and Chemical & Biological Weapons (CB) reasons, regardless of license requirements (meaning regardless of whether the export was authorized under a license, license exception, or designated as no license required). Because of the AES filing exemption for non-licensed items to Canada, BIS currently has little visibility into the movement of these items into Canada, except for exports to Canada that involve a licensed item (see paragraph (b)(2) of section 758.1), a 9x515 or “600 series” item (see paragraph (b)(3) of section 758.1) or are to be transhipped to a third country (see paragraph (b)(6) of section 758.1) which do require EEI filing in the AES. Therefore, BIS is seeking information that would help us determine:

- the volume of trade that would be impacted by this filing requirement;
- if this filing requirement would be beneficial and practical or detrimental and burdensome for industry;
- if this filing requirement would have a commercial impact on exporters; and
- if there are alternative methods to collecting or accessing this data.

E. Other suggestions for improving and harmonizing export clearance requirements. Any other suggestions for improving the EAR export clearance requirements, including suggestions where additional harmonization should be considered for the export clearance requirements under the EAR and ITAR to ease the regulatory burden on exporters and make the provisions more effective would be helpful to receive in response to this ANPR. These suggestions can

apply to any export clearance provision under part 758 of the EAR or any other EAR provisions that relate to export clearance requirements.

Comments should be submitted to BIS as described in the **ADDRESSES** section of this ANPR by [insert date 45 days from date of publication in the *Federal Register*]. BIS will consider all comments submitted in response to this ANPR that are received before the close of the comment period. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. BIS will not accept public comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. BIS will return such comments and materials to the persons submitting the comments and will not consider them. All public comments in response to this ANPR must be in writing and will be a matter of public record, and will be available for public inspection and copying on the BIS Freedom of Information Act (FOIA) Reading Room at <http://efoia.bis.doc.gov/index.php/electronic-foia/index-of-documents>.

Dated: May 13, 2015

Kevin J. Wolf,

Assistant Secretary of Commerce for Export Administration

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